

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.12 OF 2007

Shri Chandragonda Shivgonda Patil)
partner Azad Chitra Mandir)
Age-68 years, Occupation : Trader)
and Agriculturist, Residing at)
10/1120A, Near Hulageshwari Mill,))
Ichalkaranji, Tal.Hatkanangale,)
Dist. Kolhapur.)..Petitioner

Versus

- 1) D.B.Powar)
Age 52 years, Occ.Service,)
Special Recovery Officer,)
Ichalkaranji Urban Co-operative)
Bank Ltd., Ichalkaranji)
Dist. Kolhapur)
- 2) B.R.Tawase)
Age 68 years, Managing Director)
Ichalkaranji Urban Co-op.Bank)
Ltd., Ichalkaranji,)
Dist. Kolhapur.)
- 3) The State of Maharashtra)..Respondents

Mr.P.D.Dalvi for the petitioner.

Mr.A.B.Vagyanani for respondent nos.1 & 2.

Mrs.M.H.Mhatre APP for the State.

Coram : R.S.MOHITE, J

Date : 19/22.11.2007.

Judgment :-

1. Heard. Rule. By consent rule returnable forthwith.

2. The petitioner files this petition impugning a judgment and order dated 13.10.2006 passed by the Addl.Sessions Judge Ichalkaranji, Dist. Kolhapur

in Criminal Revision No.117/2006. By the impugned judgment and order the Addl.Sessions Judge, Ichalkaranji has allowed the revision petition filed by the present respondent no.1, set aside an order dated 24.7.2006 passed by the JMFC Ichalkaranji in Regular Criminal Case No.192/2006 and has dismissed the complaint filed by the present petitioner.

3. The brief facts of the case are as follows :-

(a) On 24.7.2006, the present petitioner (hereinafter referred to as the "Complainant") filed a criminal case in the Court of JMFC, Ichalkaranji. It was contended by the Complainant in his complaint that the present respondent nos.1 & 2 (hereinafter referred to as the "accused nos.1 & 2") had committed offences punishable under Sections 467, 468, 471 & 420 read with Section 34 of IPC. A brief reading of the complaint indicates that the allegation against the accused was that they had effected recoveries of certain amounts due under 3 awards passed by the Co-operative Court in a manner which was not permitted by law.

(b) On 24.7.2006 itself, the JMFC Ichalkaranji passed the following order below the Complaint Exh.1 :-

" Put up for verification on 2.8.2006".

(c) On 12.9.2006 accused no.1 filed a revision in the Court of the Sessions Judge Ichalkaranji seeking relief of the setting aside of the aforesaid order dated 24.7.2006 passed on Exh.1 in respect of the taking of the cognizance of the case and putting up the complaint for verification.

(d) During the pendency of the revision application on 21.9.2006 the JMFC proceeded to record the verification. However, before any further steps could be taken, by his order dated 12.12.2006 the Addl.Sessions Judge, Ichalkaranji, allowed the revision application, set aside the order dated 24.7.2006 and dismissed the complaint. This resulted in the filing of the present petition by the complainant.

4. Two contentions of law were canvassed on behalf of the petitioner which are as follows :-

(i) That merely by ordering the recording of verification, the Magistrate cannot be said to have taken cognizance of an offence within the meaning of Section 190(1) of Cr.P.C.

(ii) That in any case the order directing the recording of verification was not a revisible order

as it was interlocutory in nature and a revision against such an interlocutory order was barred by the provisions of Section 397(2) of the Cr.P.C.

5. As regards the first contention, Advocate for accused nos.1 & 2 contended that the taking of cognizance was a condition precedent to the Magistrate passing an order putting up complaint for verification and that it will not be the correct position of law to state that taking of the cognizance of an offence can follow the verification of the complaint as contemplated by Section 200 of the Code of Criminal Procedure 1973.

6. As regards the second contention, he contended that though the revision was styled as a revision against an order dated 24.7.2006 which directed the complaint to be put up for verification, this order was preceded by taking of a cognizance of the offences alleged by the complainant. He contended that such taking of a cognizance of the offences affected the right of the accused and therefore, the order directing verification after the taking of cognizance was a revisible order as it touched the rights of the accused.

7. As regards the first contention the petitioner relied upon the provisions of Section 200 of the Cr.P.C. which contemplates that if after

considering the statements on oath (if any) of the complainant and of the witnesses and the result of the enquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. He further pointed out that provisions of Section 204 of Cr.P.C. provide that if in the opinion of a Magistrate taking cognizance of an offence there was sufficient ground for proceeding, then he could issue a summons or a warrant to secure the attendance of the accused or cause them to be brought before him as provided for in the said section. In short, his contention was that the application of mind for the purpose of taking cognizance could only take place after the verification of the complaint by recording of statements on oath of the complainant and witnesses if any present. He therefore, contended that no cognizance of the offence could be taken prior to the verification of the complaint.

8. Amongst the earliest decisions on the question as to what amounts for taking up cognizance was the judgment of the Calcutta High Court in the case of **Emperor v. Sourindra Mohan Chuckerbutty** reported in 37 Cal. 412. In the judgment, the division bench observed as under :-

" for taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of crime."

9. In **Gopal Marwari v. Emperor** reported in **AIR (30) 1943 Patna 245**, a Special bench of 3 judges of the Patna High Court after relying upon the judgment of **Emperor v. Sourindra Mohan Chuckerbutty**(supra) observed as follows :-

" In my judgment, the word "cognizance" is used in the Code to indicate the point when a Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate. Cognizance is taken of cases, not of persons, and there seems to be nothing in theory to prevent a Magistrate from taking cognizance of a case even where the offenders are unknown. The fact that a Magistrate has taken cognizance does not necessarily mean that there will be judicial proceedings against any one. For example, where cognizance is taken upon a complaint, the complaint may be summarily dismissed, or may be dismissed after inquiry, under S.203. The accused may never be summoned, or made a party to the proceedings. In fact the person complained against may never become an accused person in the technical sense. Nevertheless, having regard to the terms of S.200 it is clear that in such a case cognizance has been taken. Section 200 seems to regard the taking of cognizance as something prior even to the examination of the complainant upon oath, since the section says: "a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath."

10. In the case of **Superintendent & Rembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee** reported in AIR (37) 1950 Calcutta 437, a Division Bench of the Calcutta High Court observed as follows :-

" Before it can be said that any Magistrate has taken cognizance of any offence under S.190(1) (a), he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the chapter. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chapter, but for taking action of some other kind, e.g., ordering investigation under S.156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

11. In the case of **R.R.Chari v. State of U.P.** reported in AIR (38) 1951 Supreme Court 207, the Apex Court noticed the aforesaid three judgments and after briefly recording the observations made in the three judgments, opined that the approach taken was a correct approach to the question before the Courts.

12. In the case of **Narayandas Bhagwandas v. State of West Bengal** reported in AIR 1959 SC 1118, after dismissing the attempt to distinguish the judgment in R.R.Chari's case (supra) the Apex Court observed as under :-

" It is however, argued that in Chari's case, 1951 SCR 312 (AIR 1951 SC 207), this Court was dealing with a matter which came under the Prevention of corruption Act. It seems to us, however, that that makes no difference. It is the principle which was enunciated by Das Gupta, J., which was approved. As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance was taken of an offence. Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under S.200 and subsequent sections of Ch.XVI of the Code of Criminal Procedure or under S.204 of Ch.XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance."

13. In **Darshansingh Ram Kisan v. State of Maharashtra** reported in 1971(2) SCC 654, in paragraph-8 the Apex Court observed as follows :-

" Taking cognizance does not involve any formal action or indeed action of any kind but occurrence as soon as the Magistrate apply his mind to the suspected commission of an offence, cognizance, therefore, takes place at a point when the Magistrate first take judicial notice of an offence."

. This is the position where the Magistrate take cognizance of an offence under complaint or on a police report, or upon information of a person other than police officer.

14. In the case of **D.L.Reddy & ors. v. V.N.Reddy & ors.** reported in AIR 1976 SUPREME COURT 1672,

Three Judges of the Apex Court in paragraphs-14 & 15 of the judgment dealt with the question as to what was meant by taking cognizance of an offence and explained the position of law in this regard as under :-

"14. This raises the incidental question : What is meant by 'taking cognizance of an offence' by the Magistrate within the contemplation of Section 190 ? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint the Magistrate applies his mind for the purpose of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1) (a). If, instead of proceeding under Chapter XV, he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence."

15. This position of law has been explained in several cases by this Court, the latest being Nirmaljit Singh Hoon v. State of West Bengal, (1973) 3 SCC 753 = (AIR 1972 SC 2639)."

15. In **Kishun Singh & Ors. v. State of Bihar** reported in 1993 (2) SCC 16 the Apex Court observed as under :-

" Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would institute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. Mere application of mind does not amount to taking cognizance unless the Magistrate does so for proceeding under Sections 200/204 of the Code (see *Jamuna Singh v. Bhadai Sah*). It is, therefore, obvious that if on receipt of a complaint under Section 154 of the Code in regard to a cognizable offence, an offence is registered and the concerned police officer embarks on an investigation and ultimately submits a police report under Section 173 of the Code, the Magistrate may take cognizance and if the offence is exclusively triable by a Court of Sessions, he must follow the procedure set out in Section 209."

16. In the case of **State of West Bengal & Anr. v. Mohd. Khalid & Ors.** reported in 1995 (1) SCC 684 the Apex Court after taking note that the expression "taking cognizance" had not been defined in the Code.

. In paragraph-43 of the judgment held as under :-

In its broad literal sense it means taking notice of an offence. This would include

the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceeding or for other purposes. The word "cognizance" indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings ; rather it was a condition precedent of initiating of the proceeding by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

17. The next question is the stage at which cognizance should be taken. In para 22 of the case of **Nirmaljit V. State of W.B.** reported in AIR 1972 SC 2639, the judgment the Apex Court observed as under :-

"Under Section 190 of the Code of Criminal Procedure, a magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him, he can under S.200 take cognizance of the offence made out therein and has then to examine the complainant and his witnesses. The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person." (emphasis provided)

18. In the case of **Adalat Prasad v. Rooplal Jindal** reported in 2004 CRI.L.J. 4874. In paragraphs-12, 13 & 14 of its Judgment the Apex Court analysed the scheme of the Code which provided for consideration of the complaint by a Magistrate in the following manner :-

"12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complainant and examine upon oath the complainant and the witnesses present if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses has not made out sufficient ground for proceeding. Per contra if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at the stage has materials to proceed, he can proceed to issue process under Section 204 of the Code.

"13. Section 202 contemplates postponement of issue of process. It provides that if the Magistrate on receipt of the complaint if he thinks fit, to postpone the issuance of process against the accused and desires further inquiry into the case either by himself or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, he may do so. In that process if he thinks it fit he may even take evidence of witnesses on oath, and after such investigation, inquiry and the report of the Police if sought for by the Magistrate and if he finds no sufficient ground for proceeding he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under section 203 of the Code."

"14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under section 204 of the Code. Therefore what is necessary or a condition precedent for issuing process under section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under section 202 that there is sufficient ground for proceeding with the complaint hence issue

the process under section 204 of the Code....."

19. In the case of **CREF Finance Ltd., v.Shree Shanthi Homes (P) Ltd., & Anr.** reported in (2005) 7 Supreme Court Cases 467, in paragraph-10 the Apex Court observed as under :-

" In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of the statement of the complainant on 1-6-2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the court may consider it appropriate to send the complaint to the police for investigation

under Section 156(3) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority, etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal."

20. In the case of **State of Karnataka v. Pastor P.Raju** reported in (2006) 6 Supreme Court Cases 728, after referring to its earlier judgment the case of **Darshansingh (supra)**, **Narayan B.Das (supra)**, **Kisansingh (supra)** and case of **West Bengal (supra)** the Apex Court in paragraph-13 observed as under :-

"It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed

against the offenders against whom a prima facie case is made out."

21. Chapter XV of the Code of Criminal Procedure pertains "Complaints to Magistrates" and consists of 4 sections being 200, 201, 202 & 203. For the purpose of obtaining the clear and complete picture, these sections are reproduced hereinafter and are as follows :-

"200. Examination of complaint- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint ; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192;

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

"201. Procedure by Magistrate not competent to take cognizance of the case- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect ;

(b) if the complaint is not in writing, direct the complainant to the proper

Court.

" 202. Postponement of issue of process-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding ;

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the

witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

Amendment Act, 2005 - False complaints are filed against persons residing at for off places simply to harass them. In order to see that innocent persons are not harassed

by unscrupulous persons, this clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused. (Notes on Clauses)

203. Dismissal of complaint- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

22. Chapter XVI of the Code of Criminal Procedure bears the title "Commencement of proceedings before Magistrates". Section 204 which is the first section under this chapter deals with issue of process. What follows from the aforesaid is that the procedure contained in sections 200 to 203 are procedures preceding the stage of issuance of process by the Magistrate.

23. On analysis of the aforesaid sections as interpreted by the several judgments of the Apex Court referred to here-in-above, it is clear that once a complaint is put up before the Magistrate for his consideration, he is required to take the following steps :-

(a) He must first peruse the complaint and find out

if the same discloses the commission of any offence. If on a plain reading of the complaint, commission of any offence cannot be detected, then the Magistrate must return the complaint to the complainant without taking cognizance but by passing a brief reasoned order indicating as to why no offence can be said to be made out.

(b) If he finds that the complaint does make out an offence, he must then apply his mind to determine if there is any legal bar in the taking of cognizance of the said offence by a Magistrate. Such a legal bar may exist where the complaint is not filed by a person who has a right to lodge the complaint or when cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority. Where he finds that there is a legal bar prohibiting a magistrate from taking cognizance of the offence, he must, after giving reasons indicating the nature of the bar found by him, return the complaint to the complainant without taking any cognizance thereof.

(c) If he finds that the complaint discloses an offence and that there is no legal bar to the taking of cognizance by a Magistrate, he must further apply his mind to determine as to whether he has jurisdiction to try the offences alleged.

If he finds that the complaint is entertainable by some other Magistrate having jurisdiction, then he must return the complaint for presentation to the proper Court or direct the complainant to approach the court in accordance with the procedure contemplated by section 201 of the code of Criminal Procedure. The return of complaint contemplated by clauses (a) & (b) hereinabove however, is not return of a complaint as contemplated under Section 201 but is a power which flows from section 200 itself. The power to return the complaint under Section 201 only covers the cases where some other Court is competent to take cognizance of the case.

(d) If the magistrate finds that the complaint spells out an offence and there is no legal bar to take cognizance of the offence and the case falls within his jurisdiction then has an absolute discretion to do one of two things.

i) Firstly it is open to him to still avoid taking cognizance at this stage and to refer the matter to police investigation under Section 156(3), which would result in the filing of a police report u/Sec.173 of the Cr.P.C. Taking such a recourse however does not by itself terminate the complaint. On receipt of the police report, the magistrate will have a further discretion, either to treat the case as police case instituted on a police report

and take cognizance u/Sec.190(1) (b) or to continue to treat the complaint as private complaint and take cognizance of the same u/Sec.190(1)(a) of the Cr.P.C. and proceed in accordance with the procedure laid down in sections 202, 203 and 204 onwards of the Code of Criminal Procedure.

ii) Secondly in the alternative, the magistrate may decide to take cognizance of the offence. The taking of cognizance need not be reflected in any order though it is open for the magistrate to record the fact of his having taken cognizance. This taking of cognizance must precede any further steps prescribed in section 200 i.e. steps relating to the verification of the complaint by examining the complainant on oath and examining the witnesses present, if any, except in the cases contemplated by the proviso of section 200 of the Cr.P.C. The order directing verification of the complaint as aforesaid must succeed the taking of the cognizance of the complaint. It may or may not reflect the fact that cognizance of the offence must be taken by the magistrate but the ordering of the verification of the complaint, by itself would indicate that the magistrate has taken prior cognizance.

(d) That after the verification as aforesaid it is open for the magistrate to postpone the issue of

process against the accused and either to enquire into the case himself or direct an investigation to be made by a police officer or any such other person in accordance with section 202 of Cr.P.C.

(e) That at any time and at any stage after taking of the cognizance and the verification of the complaint as contemplated by section 200(1) (excepting the cases covered by the 2 proviso of section 200 where verification is not required) the magistrate on considering the statements on oath (if any) of the complainant and the witnesses and the result of the enquiry or investigation (if any) directed under section 202, if the magistrate forms an opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and in every such case he shall briefly record his reasons for doing so.

(f) If however, he finds that the complaint has substance and cannot be dismissed under Section 203, it is only then that the procedure contemplated by the next chapter i.e. chapter XVI of the Cr.P.C. should be commenced by issue of process as contemplated u/Sec.204 of Cr.P.C.

24. In my view, any order passed u/Sec.200 & 201 which has the effect of the return of the complaint to the complainant or an order u/Sec.203 which

would result in the dismissal of the complaint would be final orders on the complaint and would be revisible. Any order directing verification in accordance with section 200, however, will only be an inter locutory order as it would still be open to the magistrate to dismiss the complaint u/Sec.203. Similarly the orders directing an enquiry or an investigation under Section 202 will also be inter locutory orders as the same can be followed by the dismissal of the complaint. All the aforesaid inter locutory orders in my view, do not affect the rights of the accused. They are orders pertaining to procedures relating to the obtaining of material by the magistrate in order to determine whether the complaint should be dismissed u/Sec.203 or whether he is required to take the next step and issue the process against accused.

25. In the facts of the present case, on my finding recorded here-in-before, it must follow that the order passed by the Addl.Sessions Judge, Ichalkaranji on 13.10.2006 in Criminal revision no.117/2006 setting aside an order passed by the JMFC, Ichalkaranji dated 24.7.2006, only putting up the complaint for verification is a judgment and order quashing an inter locutory order. Addl.Sessions Judge could not have passed such orders in view of the bar contained in section 397(2) of the Code of Criminal Procedure 1973. For

this reason the impugned judgment and order passed by the Addl. Sessions Judge needs to be quashed and set aside. It is however, made clear that it will be open for the JMFC Ichalkaranji to verify the complaint in accordance with section 200 of the Cr.P.C., hold an enquiry or investigation if he so desires and either dismiss or proceed with the complaint, depending upon the fact as to whether he finds substance in the complaint. It is further made clear that if the magistrate does issue process against the accused persons it will be open for any accused persons to challenge the order issuing process in any appropriate proceeding in a Court of law.

26. Thus, Rule is made absolute in terms of prayer clause-(a). It is made clear that petition is succeeding only on the point of law. I have not dealt with the merits of the case and it will be open for the Courts to deal with the complaint on its own merits. Petition disposed off accordingly.

(R.S.MOHITE, J)